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SENATE BILL 354

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO CONSERVANCY DISTRICTS; REQUIRING ELECTIONS WITHIN CERTAIN CONSERVANCY DISTRICTS TO BE CONDUCTED BY THE SECRETARY OF STATE BY MAIL-IN BALLOT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-14-20 NMSA 1978 (being Laws 1975, Chapter 262, Section 3, as amended) is amended to read:

"73-14-20. DEFINITIONS.--As used in Sections 73-14-18 through ~~[73-14-32]~~ 73-14-30 NMSA 1978:

~~[A. "absent voter" means a qualified elector who has requested an absentee ballot forty days prior to an election;~~

~~B. "absentee-early voter" means a qualified elector who has voted early, prior to election day, on an electronic voting machine at a designated absentee-early voter~~

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1 ~~precinct;~~

2 ~~G.~~ A. "benefited area" means that area described
3 by a property appraisal that receives a benefit as a result of
4 the creation of a district for any of the purposes specified in
5 Section 73-14-4 NMSA 1978;

6 ~~D.~~ B. "election director" means the person whom
7 the ~~[board of directors]~~ secretary of state may request to
8 provide election services by a contract approved by the
9 secretary of state;

10 ~~E.~~ C. "election officer" means a person appointed
11 by the ~~[board of directors]~~ secretary of state to conduct the
12 election in the absence of an election director and who
13 performs all election services required by statute;

14 ~~F.~~ D. "list compiler" means a contractor approved
15 by the ~~[board of directors]~~ secretary of state to compile and
16 produce a qualified elector list for a conservancy district;

17 ~~G.~~ E. "qualified elector" means an individual who
18 owns real property within the benefited area of the conservancy
19 district and who has provided proof of an ownership interest to
20 one of the sources specified in Subsection B of Section
21 73-14-20.1 NMSA 1978 within the required time period, or who
22 resides on and owns legal or equitable title in tribal lands
23 and who is over the age of majority;

24 ~~H.~~ F. "qualified ~~[elector's]~~ elector list" means
25 the list compiled before each election that contains the

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1 individual names of all qualified electors; and

2 ~~[F.]~~ G. "residence" means a dwelling that lies
3 partially or completely within the benefited area."

4 Section 2. Section 73-14-20.1 NMSA 1978 (being Laws 1990,
5 Chapter 48, Section 1, as amended) is amended to read:

6 "73-14-20.1. QUALIFIED ELECTOR LIST.--

7 A. The ~~[board of directors of the conservancy~~
8 ~~district]~~ secretary of state may contract for a list compiler
9 before each election to compile and produce a qualified
10 ~~[elector's]~~ elector list for the conservancy district. The
11 list compiler shall deliver the completed list to the election
12 director no later than forty-five days prior to a district
13 election. An individual who purchases property ninety days
14 prior to an election and whose name does not appear on the
15 qualified ~~[elector's]~~ elector list shall not vote in that
16 election. The individual may become certified to vote in a
17 future election by filing ~~[his]~~ the deed of title with the
18 appropriate county clerk at least ninety days before the next
19 conservancy district election.

20 B. Names of qualified electors shall be obtained
21 from the records of the county clerk of the appropriate county,
22 the appropriate county assessor of the appropriate county,
23 records of the conservancy district or from the census bureau
24 and enrollment records provided by the pueblos. The county
25 assessor of the appropriate county, the county clerk of the

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1 appropriate county and the tribal representatives of the
2 appropriate pueblos shall deliver to the election director all
3 records regarding qualified electors of the benefited area no
4 later than the last day of each March before a district
5 election.

6 C. Updating the qualified [~~elector's~~] elector list
7 shall consist of adding, for any new qualified elector who has
8 purchased property in the district, the name, address and
9 description of all property owned by the qualified elector in
10 the benefited area and removing the name of any elector who is
11 deceased or [~~is no longer a qualified elector because he~~] who
12 no longer owns property within the benefited area.

13 D. Proof of ownership of land within the benefited
14 area requires one of the following:

15 (1) a recorded deed or real estate contract
16 indicating current ownership of land within the benefited area;

17 (2) an individual's name on county clerk
18 records indicating a description of property the individual
19 owns within the benefited area;

20 (3) an individual's name on a list compiled by
21 the governing body of a pueblo within the benefited area
22 indicating that the individual named is residing on and has
23 legal or equitable title in the pueblo; or

24 (4) a current property tax bill indicating
25 ownership of land within the benefited area.

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1 E. ~~[The election officer or the election director~~
2 ~~shall distribute to each polling place a current qualified~~
3 ~~elector's list for the appropriate county. The election~~
4 ~~officer or the election director shall distribute the qualified~~
5 ~~elector's list to each polling place within a pueblo located~~
6 ~~within the benefited area. A qualified elector may vote at any~~
7 ~~one polling place in the pueblo or county where he owns land.]~~
8 An individual who seeks to cast [his] a vote but [finds his]
9 whose name is not on the qualified [elector's] elector list
10 shall not be allowed to vote in that election."

11 Section 3. Section 73-14-24 NMSA 1978 (being Laws 1975,
12 Chapter 262, Section 7, as amended) is amended to read:

13 "73-14-24. TIME AND PROCEDURE FOR ELECTION.--

14 A. On the first Tuesday after the first Monday in
15 January prior to the middle Rio Grande conservancy district
16 election, an election proclamation shall be published that
17 includes a list of the offices for which a candidate may file,
18 the date and place at which declarations of candidacy shall be
19 filed and the date of the election. The election proclamation
20 shall be published once in a newspaper of general circulation
21 in the counties in which the election shall be held.

22 B. The members of the boards of directors created
23 pursuant to provisions of Sections 73-14-18 through [73-14-32]
24 73-14-30 NMSA 1978 shall be elected by mail-in ballot at an
25 election [held] on the first Tuesday after the first Monday in

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1 June [~~in 2001 and~~] in each odd-numbered year [~~thereafter~~].

2 C. The elections for the members of the board of
3 directors of the conservancy district shall be conducted,
4 counted and canvassed as provided in Sections 73-14-18 through
5 [~~73-14-32~~] 73-14-30 and 73-14-84 through 73-14-86 NMSA 1978.

6 [~~The polls may be opened and closed in the same manner as
7 provided for the general election under the Election Code.~~

8 D. [~~If only one candidate has filed a declaration of
9 candidacy for a position to be filled at an election, no
10 declared write-in candidate has filed for a position and there
11 are no questions or bond issues on the ballot, only one polling
12 place for the election may be designated. The one polling
13 place may be located in the office of the election director or
14 in the office of the middle Rio Grande conservancy district.]"~~

15 Section 4. Section 73-14-27 NMSA 1978 (being Laws 1975,
16 Chapter 262, Section 10, as amended) is amended to read:

17 "73-14-27. ELECTION [~~LOCATION OF POLLING PLACES~~]
18 --NOTICE OF ELECTION [~~CREATION OF ABSENT VOTER PRECINCT~~].-- [~~A.~~]
19 For every conservancy district election, [~~the board of~~
20 ~~directors shall provide for adequate polling places within the~~
21 ~~boundaries of the conservancy district. In addition, the board~~
22 ~~of directors shall provide a polling place at the main office~~
23 ~~of the conservancy district and may provide such other~~
24 ~~locations as it deems necessary. The board of directors may~~
25 ~~also create absentee-early voter and absent voter precincts.~~

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1 ~~B.]~~ notice of the election shall be published three times in a
2 newspaper of general circulation within each county of the
3 district. Each notice shall state the time ~~[place]~~ and purpose
4 of the election and that each qualified elector will receive a
5 mail-in ballot prior to the election. Notice shall be
6 published twenty, ten and five days before the election."

7 Section 5. Section 73-14-28 NMSA 1978 (being Laws 1975,
8 Chapter 262, Section 11, as amended) is amended to read:

9 "73-14-28. ELECTION JUDGES.--The election officer or the
10 election director shall select ~~[two or more]~~ three election
11 judges for ~~[each polling place established within]~~ the
12 conservancy district. ~~[The election officer or the election~~
13 ~~director shall also appoint absentee early voter and absent~~
14 ~~voter precinct boards.]"~~

15 Section 6. Section 73-14-28.1 NMSA 1978 (being Laws 1996,
16 Chapter 42, Section 12) is amended to read:

17 "73-14-28.1. ELECTION.--The ~~[board of directors of the~~
18 ~~conservancy district]~~ secretary of state shall conduct the
19 election pursuant to ~~[Chapter 73, Article 14]~~ Sections 73-14-18
20 through 73-14-30 NMSA 1978 and other applicable election laws
21 or shall select an election director ~~[as defined in Section~~
22 ~~73-14-20 NMSA 1978]~~ to provide election services. The election
23 director shall operate pursuant to a contract approved by the
24 secretary of state. The election ~~[may]~~ shall be conducted by
25 ~~[emergency paper ballot, electronic voting machine or any other~~

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1 ~~state-certified tabulating voting machine~~ mail-in ballot."

2 Section 7. Section 73-14-29 NMSA 1978 (being Laws 1975,
3 Chapter 262, Section 12, as amended) is amended to read:

4 "73-14-29. FORM OF BALLOT--ELECTION MATERIALS.--The
5 election officer or ~~[the]~~ election director shall oversee the
6 preparation and printing of the ~~[ballots]~~ election materials
7 for a conservancy district election. ~~[Ballots]~~ Election
8 materials shall be prepared and printed at the expense of the
9 conservancy district. ~~[The election officer or the election~~
10 ~~director shall oversee the preparation of a separate ballot for~~
11 ~~each county within the conservancy district or the preparation~~
12 ~~of one ballot for use within the entire conservancy district.]~~
13 The ~~[board of directors]~~ secretary of state shall approve the
14 form of the ~~[ballot. The ballot shall contain the numbered~~
15 ~~position or positions as the case may be to which directors are~~
16 ~~to be elected at the election, with the names of all candidates~~
17 ~~for each position listed under that designation]~~ election
18 materials. Election materials shall include:

19 A. ballots. The election officer or election
20 director may prepare a separate ballot for each county within
21 the conservancy district or one ballot for use within the
22 entire conservancy district. For elections at which directors
23 are selected, the ballot shall contain the numbered positions
24 to which directors are to be elected at the election, with
25 names of all candidates for each position listed under that

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1 designation;

2 B. official inner envelopes for use in sealing
3 completed ballots;

4 C. official mailing envelopes for use in returning
5 the official inner envelopes to the election officer or
6 election director. The reverse of each official mailing
7 envelope shall contain a form, to be executed by the qualified
8 elector completing the ballot, that contains such affirmations
9 as the election officer or election director shall prescribe;

10 D. ballot instructions describing how to complete
11 and return ballots; and

12 E. official transmittal envelopes for use by the
13 election officer or election director in mailing ballot
14 materials."

15 Section 8. A new Section 73-14-29.1 NMSA 1978 is enacted
16 to read:

17 "73-14-29.1. [NEW MATERIAL] MAILED BALLOTS--QUALIFIED
18 ELECTOR LIST.--

19 A. The election officer or election director shall
20 enter the following on the qualified elector list:

21 (1) the date of the mailing of the ballot to
22 each qualified elector; and

23 (2) the date and time the completed ballot was
24 received from each qualified elector by the election officer or
25 election director.

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1 B. No later than thirty days prior to the date of a
2 conservancy district election, the election officer or election
3 director shall mail a set of election materials to each
4 qualified elector.

5 C. The qualified elector list is a public record
6 open to public inspection in the election officer's or election
7 director's office during regular office hours."

8 Section 9. A new Section 73-14-29.2 NMSA 1978 is enacted
9 to read:

10 "73-14-29.2. [NEW MATERIAL] MAILED BALLOTS--MANNER OF
11 VOTING.--A qualified elector voting in a conservancy district
12 election shall secretly mark the ballot, place it in the
13 official inner envelope and securely seal the envelope. The
14 elector shall then:

15 A. place the official inner envelope inside the
16 official mailing envelope and securely seal the envelope; and

17 B. complete the form on the reverse of the official
18 mailing envelope, which shall include an affirmation by the
19 elector under penalty of perjury that the facts stated in the
20 form are true."

21 Section 10. A new Section 73-14-29.3 NMSA 1978 is enacted
22 to read:

23 "73-14-29.3. [NEW MATERIAL] MAILED BALLOTS--RECEIPT OF
24 BALLOTS BY ELECTION OFFICER OR ELECTION DIRECTOR.--

25 A. The election officer or election director shall:

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1 (1) mark on each completed official mailing
2 envelope the date and time of receipt;

3 (2) record this information in the qualified
4 elector list; and

5 (3) safely keep the official mailing envelope
6 unopened in a locked and sealed ballot box until it is
7 transmitted to the election judges on election day or until it
8 is canceled and destroyed in accordance with law.

9 B. The election officer or election director shall
10 accept completed official mailing envelopes until 7:00 p.m. on
11 election day. A completed official mailing envelope received
12 after that time shall not be opened but shall be preserved by
13 the officer or director until the time for election contests
14 has expired. In the absence of a restraining order after
15 expiration of the time for election contests, the election
16 officer or election director shall destroy all late official
17 mailing envelopes without opening them or permitting the
18 contents to be examined, cast, counted or canvassed.

19 C. At 5:00 p.m. on the Monday immediately preceding
20 the date of election, the election officer or election director
21 shall record the numbers on the unused ballots and shall
22 publicly destroy all such unused ballots. The officer or
23 director shall execute and maintain a certificate of
24 destruction, which shall include the numbers on the ballots
25 destroyed."

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1 Section 11. A new Section 73-14-29.4 NMSA 1978 is enacted
2 to read:

3 "73-14-29.4. [NEW MATERIAL] HANDLING OF BALLOTS BY
4 ELECTION JUDGES.--

5 A. Before opening an official mailing envelope, the
6 election judges shall determine that the required information
7 has been completed on its reverse.

8 B. If the qualified elector's signature is missing,
9 the presiding judge shall write "Rejected" on the front of the
10 official mailing envelope. The election officer or election
11 director shall enter the qualified elector's name in the
12 signature rosters and shall write the notation "Rejected -
13 Missing Signature" in the "Notations" column of the signature
14 rosters. The presiding judge shall place the official mailing
15 envelope unopened in an envelope provided for rejected ballots,
16 seal the envelope and write the qualified elector's name on the
17 front of the envelope and deposit it in the locked ballot box.

18 C. An accredited challenger may examine the
19 official mailing envelope and may challenge the ballot of any
20 qualified elector because the official mailing envelope has
21 been opened prior to being received by the election judges.
22 Upon the challenge of a ballot, the election judges shall
23 follow the same procedure as when ballots are challenged
24 pursuant to the Election Code when a person attempts to vote in
25 person. If a challenge is upheld, the official mailing

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1 envelope shall not be opened but shall be placed in an envelope
2 provided for challenged ballots. The same procedure shall be
3 followed in canvassing and determining the validity of
4 challenged ballots pursuant to this section as with other
5 challenged ballots.

6 D. If the official mailing envelopes have been
7 properly subscribed and the qualified electors have not been
8 challenged:

9 (1) the election judges shall open the
10 official mailing envelopes and deposit the ballots in their
11 still-sealed official inner envelopes in the locked ballot box;
12 and

13 (2) the election officer or election director
14 shall enter the voter's name and residence address as shown on
15 the official mailing envelope in the signature rosters.

16 E. Prior to 7:00 p.m. on the day of the election,
17 the election judges may either remove the ballots from the
18 official inner envelopes and count and tally the results or
19 count and tally the ballots on an electronic voting machine the
20 same as if the qualified elector had voted in person. It is
21 unlawful for any person to disclose the results of a count and
22 tally or the registration on a voting machine of ballots prior
23 to 7:00 p.m. on the day of the election."

24 Section 12. A new Section 73-14-29.5 NMSA 1978 is enacted
25 to read:

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1 "73-14-29.5. [NEW MATERIAL] CANVASS--RECOUNT OR RECHECK--
2 DISPOSITION.--If electronic voting machines are not used to
3 register the mailed ballots, the ballots shall be canvassed,
4 recounted and disposed of in the manner provided by the
5 Election Code for the canvassing, recounting and disposition of
6 paper ballots. If voting machines are used to register the
7 ballots, the ballots shall be canvassed and rechecked in the
8 manner provided by the Election Code for the canvassing and
9 recheck of ballots cast on a voting machine; provided that, in
10 the event of a contest, voting machines used to register the
11 ballots shall not be rechecked, but the ballots shall be
12 recounted in the manner provided by the Election Code for the
13 recounting of paper ballots. A contest shall be conducted
14 pursuant to the contest provisions of the Election Code."

15 Section 13. A new Section 73-14-29.6 NMSA 1978 is enacted
16 to read:

17 "73-14-29.6. [NEW MATERIAL] VOTING WHEN NO MAILED BALLOT
18 RECEIVED.--

19 A. Except as provided in this section, no person
20 shall vote in person in a conservancy district election subject
21 to the provisions of Sections 73-14-18 through 73-14-30 NMSA
22 1978.

23 B. At any time prior to 5:00 p.m. on the Monday
24 immediately preceding the date of the election, a qualified
25 elector who has not received a mailed ballot may execute, in

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1 the office of the conservancy district, a sworn affidavit
2 stating that the elector did not receive the ballot. Upon
3 receipt of the sworn affidavit, the election officer or
4 election director shall issue the qualified elector a
5 replacement ballot.

6 C. The election officer or election director, no
7 later than forty-eight hours after the close of the election,
8 shall remove the outer envelopes of the replacement ballots
9 and, without removing or opening the inner envelopes, determine
10 if a mailed ballot from a qualified elector was received by
11 7:00 p.m. on election day. If the officer or director
12 determines that a mailed ballot was not received from that
13 qualified elector, the officer or director shall remove the
14 inner envelope without opening it, retain the outer envelope
15 with the other election returns and place the inner unopened
16 envelope in a secure container to be transmitted to the
17 election judges to be tallied and included in the election
18 results.

19 D. The election officer or election director shall
20 prescribe and furnish the affidavits, replacement ballots and
21 necessary envelopes for purposes of this section."

22 Section 14. Section 73-14-30 NMSA 1978 (being Laws 1975,
23 Chapter 262, Section 13) is amended to read:

24 "73-14-30. ELECTION EXPENSES.--The conservancy district
25 board shall pay out of the district's treasury to the secretary

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1 of state those sums necessary to meet the actual expenses of
2 district elections incurred by the secretary of state. The
3 board may levy a tax or assessment sufficient to meet election
4 expenses on all property that is subject to direct assessment
5 or taxation within the district."

6 Section 15. REPEAL.--Sections 73-14-31 through 73-14-31.3
7 NMSA 1978 (being Laws 1975, Chapter 262, Section 14, Laws 1996,
8 Chapter 42, Sections 15 and 16 and Laws 1999, Chapter 168,
9 Section 8, as amended) are repealed.

10 Section 16. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2007.

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